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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/057,897	01/29/2002	Toyoki Ue	JEL 31056I	5161
7590	03/24/2004		EXAMINER	
James E. Ledbetter, Esq. STEVENS, DAVIS, MILLER & MOSHER, L.L.P. Suite 850 1615 L Street, N.W. Washington, DC 20036			GANTT, ALAN T	
		ART UNIT	PAPER NUMBER	28
		2684		
DATE MAILED: 03/24/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/057,897	UE ET AL.	
	Examiner	Art Unit	
	Alan T. Gantt	2684	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 2/24/04.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 31-35 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 31-35 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. 09/424,843.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

DETAILED ACTION

Response to Arguments

Applicant's arguments filed 2/24/04 have been fully considered but they are not persuasive. Applicant primary argues that:

(a) Mahany discloses a system where a mobile station evaluates a test pattern and transmit its data rate selection to the base station, whereas applicant's invention includes reception circuitry of a transmission rate control apparatus in a base station apparatus that receives a received quality measured at a communication terminal without receiving any indication of transmission rate based on the received quality.

(b) The 35 USC rejection of claim 35 over Mahany should be withdrawn as it fails to teach the subject matter.

Regarding (a), applicant fails to provide Specification support for the added claim language. The claim language is appears to be chosen specifically to get around the rejection of the previous Office action. Applicant needs to highlight where such language {or at least strong support for such language} appears within his Specification, otherwise it may appear that the added claim language is new matter.

Regarding (b), the examiner still feels that the 35 USC 102 applies. The prior rejection of claim 35 is now made more detailed to highlight the reason why the examiner has held to this position.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 31-35 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention: The claim language is appears to be chosen specifically to get around the rejection of the previous Office action. Applicant needs to highlight where such language {or at least strong support for such language} appears within his Specification, otherwise it may appear that the added claim language is new matter.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 31-35 are rejected under 35 U.S.C. 102(b) as being anticipated by Mahany et al.

Regarding claims 31 and 33; Mahany discloses a mobile radio data communication system that may communicate with mobile units at a higher or lower data rate depending on channel conditions. Mahany allows for a polling signal to be sent from the base station, which may also constitute a test signal that is evaluated or measured at the mobile units. The remote unit responding to the polling signal may transmit as its response a selection signal specifying the data rate that has been determined to be optimum as a result of the test signal. Once the response is received at the base station, there is a provision of control means [transmission rate control circuitry] for automatically switching between two or more data rates and for adaptively selecting the best data rate dynamically according to changing operating conditions (Abstract and col. 2, lines 35-57 and col. 21, line 62 to col. 22, lines 44).

Regarding claims 32 and 34, inherently, the Mahany system changes the data rate back to the original value as the channel condition returns to the initially reported condition since each response by the mobile unit contains a report of its measured channel conditions using the base stations polling and test signal.

Regarding 35, Mahany discloses a mobile radio data communication system that may communicate with mobile units at a higher or lower data rate depending on channel conditions. Mahany meets the following limitations: monitor circuitry that monitor a received quality (col. 16, lines 13-21); judgment circuitry that judges whether the received quality deteriorates (col. 15, lines 51-65; col. 16, lines 13-21 and Figure 12 [the microprocessor of the controller does the judging]) and transmission circuitry that transmits the received quality at timing at which said judgment circuitry that the received quality deteriorates (col. 26, line 61 to col. 27, line 10 [in

transmitting, depending on the quality of the received test signal, the data rate of the signal will change on reception of the polling signal).

Conclusion

Any inquiry concerning this communication from the examiner should be addressed to Alan Gantt at telephone number (703) 305-0077. The examiner can normally be reached between 9:30 AM and 6 PM within the Eastern Time Zone. The group FAX number is (703) 872-9306.

Any inquiry of a general nature or relating to this application should be directed to the group receptionist at telephone number (703) 305-4700.

Alan T. Gantt

Alan T. Gantt

March 18, 2004

Marklow

Primary **NICK CORSARO**
PATENT EXAMINER